The new Dutch act on international sanctions measures: a first analysis

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In response to the unprecedented sanctions against Russia and the corresponding increase in political attention to sanctions in general, the Netherlands has deemed it necessary to recently propose a new Dutch act on sanctions implementation, the Wet Internationale Sanctiemaatregelen ('Wis'). This article highlights some of the most significant changes following from the Wis that will reshape the Dutch landscape of sanctions compliance and will affect compliance officers throughout the market, but particularly those working at corporates, law firms and accounting firms. This article provides an overview of the comments the market has given on the legislative proposal and summarises the impact of the Wis on compliance functions.

1. Introduction

While the origins of economic sanctions can be traced back to ancient Greece, the modern framework for sanctions has existed since the twentieth century, following the establishment of the United Nations and the European Union. Until recently, the UN played a pivotal role in shaping most sanctions regimes. However, the UN's effectiveness has significantly been undermined by the Security Council's veto system, particularly with members such as Russia using their veto power despite clear violations of international law. As a result, the UN has become increasingly irrelevant in the realm of sanctions, necessitating a more active role for the EU. The EU stepped in with unprecedented resolve.

While EU sanctions have a directly binding effect, the enforcement and penalties associated with them are governed by national law. In the Netherlands, this is regulated under the Sanctions Act of 1977, which came into force in April 1980.[2] Although there have been some amendments over the years, the core principles of the Act have remained unchanged. However, the Russian invasion of Ukraine has underscored the need for a more modern legal framework to ensure full compliance with EU sanctions. Amongst other things, a new legislative proposal, the Wet Internationale Sanctiemaatregelen ('Wis'), has been introduced.

This article highlights some of the most significant changes following from the Wis that will reshape the Dutch landscape of sanctions compliance and will affect compliance officers throughout the market, but mostly those working at corporates and at law firms and accounting firms in particular, as many new implications for those sectors have been and are yet to be introduced. The article provides an overview of the comments the market has given on the legislative proposal. It summarizes where in particular improvement is required in order to comply with the EU sanctions without unnecessarily burdening the market. At the end of the article a paragraph is included that summarizes the impact of the Wis on compliance functions.

2. Need voor change

Almost immediately after the Russian invasion of Ukraine, the EU implemented a sanctions regime against Russia—one unlike anything it had imposed before—against a country that had long been an important, though controversial, business partner and major energy supplier.

This unprecedented aggression called for swift action from EU lawmakers and authorities, as existing legislation and resources in many member states, including the Netherlands, were insufficient to address the challenges posed by the new sanctions. The Sanctions Act 1977 in the Netherlands, for example, proved inadequate. It soon became apparent that Dutch authorities, like others in the EU, lacked a complete picture of Russian assets in the country. Questions arose about how to handle issues such as the confiscation of yachts of sanctioned oligarchs, Russian real estate, trust offices facilitating transactions for sanctioned individuals, corporate governance questions involving sanctioned Russian entities, and the impact on Dutch companies owned by oligarchs.

As media coverage grew with regard to the system's failure to track these sanctions-related issues, the Dutch government appointed a National Coordinator for Sanctions Compliance. This role was tasked with coordinating the various sanctions authorities under the Sanctions Act 1977 and identifying solutions for improving sanctions enforcement in the Netherlands.

Over time, it became clear to the government that

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2. *Stb.* 1980, 93, 14006.

the existing legal framework was insufficient to handle the complexities of EU sanctions. In response, the decision was made to establish a specialized team within the Dutch Ministry of Foreign Affairs to draft new sanctions legislation. The Sanctions Act 1977 was no longer suited to the current reality, and new powers and obligations were needed to ensure full compliance.

In 2023, this team started consultations with various branch organisations of many sectors that are impacted by sanctions, gathering input from financial institutions, the insurance industry, accountants, corporates, and legal professionals, among others. This collaborative effort resulted in a first draft of the Wis, which was introduced for public consultation on 7 June 2024.[3] After a round of feedback and further discussions during a "sanctions week," the draft is now being revised, with an updated version yet to be published.

3. The Wis

The Wis introduces several key changes to the Dutch sanctions framework, of which the following have the biggest impact:

1. A central notification point for sanctions compliance;
2. Notification obligations for a number of sectors and exemptions to professional secrecy;
3. Provisions relating to the continuity of companies:
   i. Ex-officio appointment of "silent" administrator;
   ii. Request for appointment of "silent" administrator;
4. The take-over of registered goods and recovery of costs;
5. Supervision and enforcement;
   i. Designation decision;
   ii. Penalty order;
   iii. Administrative fine and publication;
   iv. Special enforcement power in case of serious non-compliance with sanction measures or in case of risk of serious evasion; and
6. A duty to forward information to relevant registers.

The key provisions of the Wis will be discussed below in the order of their appearance in the Wis, with market feedback on each provision addressed immediately thereafter. Before delving into the specifics of the Wis, it is important to make two general comments.

By way of general comment, it is noted that the draft Wis does not yet address new rules on the *administrative organisation* and *internal controls* ('AO/IC'), which are currently covered by the *Regeling toezicht Sanctiewet 1977* ('Rtsw'). This omission is due to the adoption of a new EU Anti-Money Laundering ('AML') package in 2024, which includes the AML single rulebook, set to apply as of July 2027. This package will introduce specific provisions on sanctions compliance, including AO/IC requirements. In view of the timing gap, a second tranche of the Wis is expected before the new AML rules come into force, with further guidance on AO/IC to be incorporated at that time. For now, the Wis focuses on amending the Sanctions Act 1977 in a more general sense.

A second general comment is that many market participants have argued that establishing a single, unified Dutch sanctions authority would have been the most effective way to address the fragmented sanctions oversight system in the Netherlands. A structure similar to those in the US and UK, where reporting, guidance and enforcement are handled by a single authority, could have potentially resolved this fragmentation. However, the decision was made to maintain the current system, with multiple specialized authorities, each focusing on distinct enforcement aspects. Reasons for this decision include concerns about losing expertise within specialized authorities, the challenges of creating a single authority, and ongoing political debates about which ministry should oversee it. This approach will not be further explored in this article.

4. Central Reporting Office for sanctions compliance

The Wis establishes the framework for a Central Reporting Office, which will introduce a standardized reporting form. This office will receive, record, and verify reports, as well as analyse the information. The findings will be shared with relevant ministries and the European Commission. Furthermore, under the proposed data-sharing provisions, the office will distribute information on reports and patterns to authorities such as the Central Service for Import and Export (*Centrale Dienst In- en Uitvoer*), customs, public registries, and enforcement agencies. Additionally, the Central Reporting Office will provide guidance to those with reporting obligations, helping them better understand their responsibilities and improve compliance. The office will also have the authority to request information from regulators (and vice versa) and share data with authorities in other EU member states.

The Central Reporting Office will not provide information on individual cases, such as whether a particular party is subject to sanctions and must be reported. That responsibility remains with the reporting entities.

3. The full consultation, including all underlying documentation can be found here: https://www.internetconsultatie.nl/sanctiemaatregelen/b1.

a. Streamlining sanctions reporting: opportunities and challenges

The proposed Central Reporting Office, envisioned as a centralized information hub, has been positively received by the market. The idea is that the job of compliance officers will become much easier, as they would no longer have to go to different authorities for each and every single report. However, questions remain about its location, oversight, and the ministry under which it will operate.

Uncertainty also surrounds the specific information required under the new reporting obligations and how overlapping requirements will be managed. Reporting duties under sanctions regulations are currently fragmented, with additional obligations under the AML Act. The feasibility of consolidating these processes for efficiency is a critical concern. While centralization could streamline reporting, legal complexities present obstacles. Reporting under the sanctions regime and the AML Act serves distinct purposes, involving different procedures. For instance, sanctions notifications often include changes in shareholdings, unrelated to sanctioned entities or violations. This divergence makes combining the reports into a single system challenging.

Nevertheless, the aim to consolidate all sanctions-related reports under the Central Reporting Office would significantly reduce the number of reporting authorities, offering a step toward greater efficiency.

5. New sectors added to sanctions compliance oversight

Following advice from the National Coordinator for Sanctions Compliance, the Wis extends business supervision and reporting obligations to civil law notaries, tax advisors, attorneys and accountants. These professions will now adhere to administrative and internal control requirements similar to those applied to financial institutions under the Rtsw. This expansion aims to strengthen sanctions compliance both within these sectors and overall.

Supervisory responsibilities for these sectors will fall to the *Bureau Financieel Toezicht* and the dean of the Dutch Bar Association, leveraging their existing roles under the AML Act. To facilitate enforcement, the proposal waives professional confidentiality for attorneys and civil law notaries in certain cases.[4]

The specific details of the additional AO/IC requirements will be outlined in a second tranche, following the implementation of the new AML package.

a. Confidentiality and privilege Concerns in New Reporting Obligations

The introduction of new reporting and compliance obligations under the Wis, coupled with the proposed waiver of confidentiality for civil law notaries and attorneys, has raised significant concerns regarding human rights, particularly the right to a fair trial and representation. Local bar deans argue that the existing powers of the deans under the Wis are sufficient to manage adequate sanctions compliance by lawyers, rendering the additional notification obligations unnecessary. The deans also advocate retaining the current district-based supervision.

The Dutch Bar Association emphasizes that waiving legal confidentiality and privilege requires a solid legal foundation, which is currently lacking or insufficiently defined. It advocates for clear guidance on what information can and cannot be disclosed to prevent unwarranted breaches of attorney-client confidentiality.

Concerns also extend to the Central Reporting Office's role in information gathering and sharing. Without proper limitations, its expanded powers could lead to the dissemination of privileged information. Stakeholders suggest narrowing and clarifying the office's objectives to mitigate these risks.

While these issues warrant further consideration in the Wis update, most market participants acknowledge that the additional reporting duties for the added professions, given the existing exemptions under the AML Act, impose minimal new burdens. Certainly, assuming these requirements are introduced, the role of compliance officer at any of these newly introduced legal subjects will become increasingly relevant and complex. Sanctions compliance is being carried out by these sectors but submitting them to active supervision will surely trigger much more awareness and possibly even more compliance checks and screenings.

6. Provisions relating to the continuity of companies

An interesting new development is the potential appointment of a "silent administrator," which can be done by the Minister ex officio[5] if sanctions against a Dutch company threaten its financial stability or continuity, resulting in significant social, economic, or employment impacts in the Netherlands. The appointment can also be requested by the company's management or supervisory board.

The purpose of this new power is to mitigate adverse effects of sanctions while ensuring compliance. The Minister will appoint independent professionals with expertise in management, restructur-

4. Although attorneys and civil law notaries will be exempt from reporting obligations related to e.g. legal proceedings or associated advice, as under the AML Act.

5. The term "ex officio" means that the minister can implement this measure without any request thereto by a third party, in other words: at its own initiative.

ing, or liquidation—typically restructuring specialists or bankruptcy trustees.

The silent administrator will not become a board member and will only intervene when necessary, issuing orders to prevent acts that could harm the company's stability or lead to negative social consequences. Any legal act that violates the administrator's instructions can be nullified, but the company's board members and employees are not liable for acts carried out under the administrator's direction.

The appointment ends once the underlying reason, such as the sanctions, no longer applies – e.g., if the shares of an indirectly sanctioned company are sold to a non-sanctioned party, severing ties with the former sanctioned shareholder. Interestingly, the appointment of a silent administrator is to be published in the State Journal, giving it external effect. The term "silent administrator" may be revised in the next version of the Wis. The requirement for "serious social, economic, or employment effects" suggests that this power will be used sparingly, especially when exercised *ex officio*.

A request from the board or supervisory board does not require evidence of serious effects but must show that the company's financial stability is at risk due to sanctions. However, the company must have made efforts to adjust its business or ownership structure to mitigate risks. If this is not demonstrated, the request will be denied. The company may be charged for the administrator's costs.

a. Implications and challenges for Dutch companies in respect of the silent administrator

The Dutch government's general ability under the Wis to intervene when sanctioned parties hold ownership or control in Dutch companies is generally seen as positive. However, the limited grounds for the release of funds under EU sanctions make it difficult for affected companies to navigate, because in many cases a license is desired to make certain payments, whereas the EU sanctions do not always provide an exemption for such payments, as a result of which they cannot be made.[6]

This issue hampers EU companies from restructuring or avoiding the application of EU sanctions. The appointment of an administrator will not address this fundamental problem. The key question is whether the appointment of an administrator can eliminate the sanction's applicability to the company. If not, the administrator will face the same restrictions as the company, making it difficult to restructure or remove the sanctioned shareholder. To address this, the impact of the administrator's role may need to be further clarified. The consequences of the administrator's activities should probably also be further clarified. Compliance officers are currently often struggling with assessing firewalls at companies, which often leads to over-compliance and avoidance of business with companies that implemented those structures. A clear take under the law on the firewall constructions to be implemented by the administrator would make it much easier for compliance officers to advise in respect of those companies.

Another point of debate is whether the appointment of an administrator, given its broad powers and significant consequences, should not require prior court approval. Such a requirement is common in other corporate law contexts and could prevent hasty governmental intervention. It would also provide the Minister with a degree of distance from the final decision to appoint the administrator. Currently, the appointment is subject to administrative objection, appeal, and higher appeal, but prior court approval – or at least a short and streamlined administrative process afterwards – might better reflect the urgency and impact of these measures.

7. Provisions regarding the acquisition of registered assets and the recovery of costs.

At the outset of the Russian invasion, numerous questions arose regarding the freezing of tangible assets owned by Russian oligarchs, such as real estate and yachts—assets that are registered. Issues surrounding responsibility for maintenance of the assets and associated costs, which had never been encountered on such a scale, remained largely unaddressed, with no clear guidance from the EU.

In response, many countries adopted creative approaches. To provide clarity for future situations, new powers have been established under the Wis allowing the competent Minister to require the owner or possessor of registered property to transfer it to a person or institution with expertise in managing such assets, particularly when there is a risk of social harm, including damage to the physical environment, related to the property.

The appointed person or institution will be responsible for the care and management of the registered asset, but will be prohibited from selling it or encumbering it with any limited rights. The costs associated with the management of the asset will be charged to the individual or entity to whom the Minister's order is directed.

6. Contrarily, in the UK and the US, the authorities have a major discretion in respect of sanctions. Those jurisdictions do not maintain strict lists of grounds for exemption, but rather leave it to the discretion of the authorities.

8. Reforms to sanctions enforcement: administrative measures in the Wis

One of the most significant and impactful reforms under the Wis is the introduction of administrative enforcement for sanctions violations by authorities and supervisors yet to be designated. Previously, such violations could only be addressed criminally, a system that has proven to be inefficient and fraught with complications. Notably, criminal enforcement placed a heavy burden on the public prosecutor, whose limited resources allowed only the most overt violations to be pursued, leading to a sparse body of criminal case law. Additionally, since criminal law is considered a last resort, many violations were not prosecuted due to concerns about the severity of criminal charges.

To remedy this, the Wis introduces the option of administrative sanctions. Under the new framework, the Minister of Foreign Affairs is empowered to appoint regulators—individuals from competent authorities who will be granted the powers outlined in Title 5.2 of the *Algemene wet bestuursrecht* ('Awb').[7] These regulators will be able to issue administrative orders, impose coercive fines (known as *last onder dwangsom*), and apply administrative penalties. The maximum fine for a violation will be EUR 103,000, or up to EUR 1,030,000 if the value of the goods involved exceeds a certain threshold. Additionally, the penalty orders may be made public, further increasing the pressure on violators.

The shift to administrative enforcement will not only alter the sanctions enforcement landscape but also introduce powerful tools through designation orders. Under Title 5.2 of the Awb, regulators will have extensive authority, including the ability to order the provision of information, seize data and documents, and search vehicles and property. Crucially, under the Awb, there is a general duty of cooperation in investigations[8], a requirement absent in criminal law. This is expected to enhance the effectiveness of sanctions enforcement.

a. The introduction of administrative enforcement of EU sanctions: efficiency and legal tension

Surprisingly, there was little commentary on the introduction of administrative enforcement for EU sanctions under the Wis. This lack of opposition is likely due to widespread agreement on the necessity of this reform to improve the efficiency of sanctions enforcement, as well as to foster the development of case law and legal certainty.

However, considerable discussion has already occurred regarding the tension between administrative and criminal enforcement, a common issue in various areas of law. The *una via*-rule, which prohibits pursuing both administrative and criminal enforcement simultaneously for the same offence, will apply here as well. This means a clear decision must be made as to which route will be pursued to avoid violating the 'ne bis in idem'-principle, which prohibits double jeopardy.

Implementing administrative enforcement will definitely also affect compliance officers, as the risk of enforcement will significantly increase, whereas the consequences will, although less severe than under criminal law, remain significant. This will require enhanced sanctions compliance but will also require more concrete understanding of administrative law – and the power supervisory authorities have thereunder – by compliance officers.

9. Replacement of Management in Non-Compliant Undertakings

A significant new provision in the Wis allows the competent Minister to appoint one or more individuals to replace the management of an undertaking. This power can be exercised if:

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   i. the company has seriously violated applicable sanctions; and
   ii. there is a risk of significant sanctions circumvention or active involvement in it by affiliated entities.

The decision to appoint a replacement will be published in the State Journal. The appointed individual will work to ensure the company complies with sanctions and prevent involvement in sanctions evasion. As far as possible, the individual will act in the company's best interest. Provisions regarding silent administrators apply here, meaning that the appointment must be revoked once the need for it ceases, company staff must comply with the appointed person's orders and will be exempt from liability for actions taken under those orders, and any legal acts in breach of the orders can be voided by the designated person or the Minister. Also, the appointed individual cannot be held liable for any damages resulting from their orders. The Minister may charge the company for the costs incurred by the appointed person. Notably, this provision does not apply to companies under financial supervision, such as banks, insurance companies, payment service providers, or trust companies, as this would otherwise interfere with such supervision and would overly complicate the supervision.

a. Management replacement will likely be applied rarely and requires further thought

Little feedback has been provided on this provision, likely because it is widely regarded as a reasonable

7. Authorities will be administrative bodies, such as Customs, *Bureau Toetsing Investeringen* and *Bureau Financieel Toezicht*, the dean of of the Dutch bar association. Supervisors will be natural persons, who will have specific supervisory powers under the Dutch administrative act.
8. Article 5:20 Awb.

measure. Companies that seriously engage in sanctions circumvention, which is the threshold for invoking this provision, are relatively rare. As such, it is expected that this provision will be used infrequently, and while not deemed highly relevant in day-to-day practice, it is seen as a useful tool when needed.

However, the appointment of a replacement manager raises complex corporate law issues, such as potential conflicts with a company's articles of association and possible shareholder conflicts. The current provisions do not clarify the scope of the administrator's powers or the conditions for their appointment, and the term "significant circumvention" remains somewhat vague, leaving room for further interpretation.

10. Data processing requirements in the Wis and Public Registers

Another important aspect of the current draft Wis is the extensive data processing provisions. While many of these provisions primarily address formalities under the General Data Protection Regulation, the obligation to transmit data is particularly significant and has practical consequences.

Under Article 8.2.4 of the Wis, competent authorities, regulators, and other entities or individuals with responsibilities under the Wis are required to send any data to relevant registers, if those data show a connection between the subject of the register and parties subject to sanctions. These include the Trade Register, *Kadaster*, UBO Register, Patent Register, Space Register, and the Register for the Protection of Original Topographies of Semiconductor Products. These registers will then generally publish the applicable sanction or the connection thereto, which aims to provide further transparency, making it easier for compliance officers to establish any sanctions link related to any of these elements.

a. Data processing and Public Registers: Overcompliance Risks and the Need for Nuanced Sanctions Application

The inclusion of corporate links to sanctioned individuals in the trade register can lead to overcompliance in the market. Such links, whether they involve shareholding, control, or board membership, do not necessarily mean the non-sanctioned company should be subject to the same sanctions. However, there is a concrete risk – we have seen many examples in the past – that these public entries result in the *de facto* application of sanctions to non-sanctioned entities. This is problematic. Ownership and control analysis is a complex, case-specific process that cannot be accurately captured in a public register, as acknowledged in EU Best Practices[9]. The challenge, then, is how the law can incorporate this necessary nuance. It will therefore also become more and more important for compliance officers to remain vigilant as to the underlying facts and documentation relation to applicable sanctions. A simple registration in a register may not always immediately entail full sanctions against such registered party.

The same concerns apply to the publication of administrative penalties. Once imposed, the publication of such penalties can only be prevented through a court's temporary provision. While legal action can halt the publication process, financial supervision experience indicates that even if a penalty is later overturned, reputational damage caused upon publication is often irreversible. Therefore, it is recommended to limit the publication of penalties to specific circumstances or thresholds to mitigate undue harm.

11. Conclusion

The new Wis significantly alters the Dutch sanctions landscape and will impose substantial demands on various sectors, including accountants, civil notaries, and attorneys. This is likely to result in increased compliance requirements, particularly for accountants and their clients. The full extent of this compliance burden remains uncertain and will depend largely on the new AML regime.

While the new powers granted to the relevant ministers are extensive, the most notable change will be in administrative enforcement. Administrative bodies have greater expertise and capacity to handle sanctions violations than the public prosecutor, which will lead to more cases and case law, enhancing legal certainty. However, this will also place additional strain on administrative courts, which will need to develop expertise in sanctions matters.

For those in compliance roles, significant changes are expected, especially for those working with newly regulated market participants or those passing obligations down the chain, as seen with banks. The measures may result in overcompliance, as companies may seek to avoid penalty decisions or being listed in registers. While overcompliance is not the goal of the Wis, balancing it with undercompliance will be key. We will need to see how the new law impacts this balance in practice.

9. Council of the European Union Update on EU best practices for the effective implementation of restrictive measures of 3 July 2024: https://data.consilium.europa.eu/doc/document/ST-11623-2024-INIT/en/pdf, para. 68.